



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2003

Mr. John Feldt
Assistant District Attorney
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2003-8404

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191575.

The Denton County Criminal District Attorney's Office (the "DA") received a request for the "entire prosecutor's file" regarding a specific case. In a letter dated October 13, 2003, the requestors clarified their request to only include: (1) Steven Chartier's confession, (2) a copy of the coroner's report, (3) all witness statements and investigator interviews of friends, family, roommates, acquaintances, including but not limited to jail-mates of Steven Chartier before the date of the plea bargain, and (4) photographs of the crime scene. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111 and 552.130 of the Government Code. We have reviewed the representative sample of information you submitted and considered the exceptions you claim.¹

As a preliminary matter, we note that because of the clarified request, most of the submitted information is not responsive to the clarified request. Accordingly, we find that this

¹ We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

information need not be released. We also note that the DA has not submitted information related to item four of the requested information for our review. We therefore presume that the DA has already provided the requestor with this information to the extent that it exists. If not, the DA must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We note that the submitted information is made expressly public under section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation made of, for, or by the DA. The completed investigation must be released under section 552.022(a)(1) unless the information is excepted from public disclosure under section 552.108 or expressly confidential under other law. Sections 552.103 and 552.111, which excepts information within the attorney work product privilege, are discretionary exceptions under the Public Information Act and do not constitute "other laws" for purposes of section 552.022.² *See* Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.103), 473 (1987) (governmental body may waive section 552.111). Thus, the DA may not withhold the requested information under section 552.103 or 552.111 of the Government Code. The attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). The Texas Rules of Civil Procedure, however, only apply to "actions of a civil nature." Tex. R. Civ. P. 2. Accordingly, the attorney work product privilege found in rule 192.5 does not apply to the criminal matter at issue here.

However, because information subject to section 552.022(a)(1) may be withheld as provided by sections 552.101, 552.108, and 552.130 we will address these sections for the requested information.

² The DA asserts the information is attorney work product excepted from disclosure under section 552.107. Section 552.107 excepts information within the attorney-client privilege, not information within the attorney work product privilege. Section 552.111 is the proper exception when asserting the attorney work product privilege.

You claim that Exhibits C, D, E and F contain social security numbers which are excepted from disclosure under section 552.101 in conjunction with federal law. Section 552.101 encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). However, the requested information in this case does not contain any social security numbers. Therefore, your section 552.101 claim does not apply to the requested information.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state. Gov't Code § 552.130(a)(1). However, the requested information does not contain any motor vehicle information. Therefore, your section 552.130 claim is also inapplicable in this situation.

We now address your section 552.108 claims. Section 552.108 states in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution [is excepted from required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [required public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You cite to subsections 552.108(a)(4) and 552.108(b)(3) in connection with your assertion of attorney work product and argue that the present request is essentially a request for the district attorney's entire prosecution file. When a request essentially seeks the entire prosecution file, the information is excepted from disclosure in its entirety pursuant to the holding in *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994) (discovery request for district attorney's entire litigation file may be denied because the decision of what to include in the file necessarily reveals the prosecutor's mental impressions or legal reasoning). In this instance, however, the clarified request submitted by the requestor narrowed the request to four specific types of information. Thus, we conclude that the present request is not a request for the district attorney's entire case file. As a result, you may not withhold the information under *Curry*, and you must demonstrate how the specified documents are excepted under subsections 552.108(a)(4) and 552.108(b)(3).

You state that the requested information was "prepared by attorneys representing the State of Texas in anticipation of, or in the course of, preparing for criminal litigation and it reflects the attorneys mental impressions and legal reasoning." Upon review of the responsive submitted information, we conclude that the requested information was not prepared by attorneys representing the State and does not reflect the mental impressions or legal reasoning of a prosecuting attorney. Thus, you may not withhold the information as attorney work product under section 552.108.

You also assert that subsections 552.108(a)(1) and 552.108(b)(1) except the requested information from disclosure. Generally, a governmental body claiming subsection 552.108(a)(1) or (b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code § 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You contend that disclosure of the requested information would interfere with law enforcement under subsection 552.108(a)(1) by discouraging frank and critical evaluation of evidence and witnesses in criminal cases. You also contend that release of the prosecutor's internal records and notations would interfere with the prosecution of crime under subsection 552.108(b)(1) by "hindering the prosecutor's ability to perform their job

in an independent manner without interference with the performance of their duties as a public servant.” However, we conclude that you have not shown how release of any of the information at issue would interfere with law enforcement or prosecution for purposes of section 552.108(a)(1) or (b)(1).

In summary, information that is not responsive to the clarified request need not be released to the requestor. The requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/lmt

Ref: ID# 191575

Enc. Submitted documents

c: Mr. Brian Pankz
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(w/o enclosures)